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DRAFT
5-10-11 a.m.

**AUTHORIZATION FOR EXECUTION OF
AMENDMENT OF LEASEHOLD
AGREEMENT AT BURLINGTON
INTERNATIONAL AIRPORT**

In the year Two Thousand Eleven.....
Resolved by the City Council of the City of Burlington, as follows:

THAT upon the May 11, 2011 recommendation of the Board of Finance and the May 16, 2011 approval of this body, the Interim Director of Aviation at Burlington International Airport (“Airport”) be and hereby is authorized and directed to execute on behalf of the City of Burlington (“City”) an amendment to a certain Fixed Base Operator and Lease Agreement (effective January 29, 2008) between the City and Heritage Aviation, Inc., d/b/a Heritage Aviation (“Heritage”) pertaining to Heritage’s securing of financing related to its operations at the Airport, and any other documents required to facilitate said amendment, all subject to review by the Chief Administrative Officer and City Attorney as necessary.

NAME/PURPOSE OF CONTRACTS:	Amendment to Existing Agreement with a Fixed Base Operator
ADMINISTRATING DEPARTMENT:	Airport
CONTRACT TERM:	Unchanged
ANTICIPATED TOTAL-	
SOURCE OF FUNDS:	Not Applicable
FISCAL YEAR:	Not Applicable
ACCOUNT NAME:	Not Applicable
ACCOUNT NUMBER:	Not Applicable

DRAFT
5-16-11
C.M.

AMENDMENT TO FIXED BASE OPERATOR AND LEASE AGREEMENT

THIS AMENDMENT, executed in duplicate original, effective as of May ____, 2011, is made by and between the City of Burlington, a municipal corporation in the State of Vermont (hereinafter called "Lessor"), and Heritage Aviation, Inc., d/b/a Heritage Aviation, a Vermont corporation with its principal place of business in South Burlington, Vermont ("hereinafter called "Lessee"), pursuant to section/paragraph 25.f. of the Fixed Base Operator and Lease Agreement between Lessor and Lessee, entered into on March 17, 2009 (effective January 29, 2008) ("Lease Agreement").¹

Upon the agreement of Lessor and Lessee, section/paragraph 1. LEASED PREMISES, of the Lease Agreement, is replaced and superceded in its entirety by the following:

1. LEASED PREMISES. Lessor hereby leases to Lessee for its exclusive use and Lessee hereby hires and takes from Lessor, the Leased Premises, consisting of land and a building upon a portion thereof (commonly referred to as "Building 890") depicted and described as Parcels C, D, E, F, G and J, as set forth in the "Lease Area Boundary Description for the Reconstructed 890 Building, Apron, Parking, Fuel/Glycol Storage Area and Wind Turbine, Heritage Aviation, Inc. d/b/a Heritage Aviation, Burlington International Airport" ("2011 Description") (appended hereto as Exhibit 1), all as depicted on a plan entitled "LEASE AREA PLAN FOR RECONSTRUCTED 890 BUILDING, APRON, PARKING, FUEL/GLYCOL STORAGE AREA AND WIND TURBINE, HERITAE AVIATION, INC. D/B/A HERITAGE AVIATION, BURLINGTON INTERNATIONAL AIRPORT ("2011 Plan") (appended hereto as Exhibit 2). The 2011 Description and 2011 Plan reflect November 8, 2010 amendments to Lessee's Sublease dated June 29, 2006 with Burlington Community Development Corporation, for the so-called Aviation Support Hanger ("2010 ASH Agreement Amendments"). Lessor and Lessee agree that the 2010 ASH Agreement Amendments

¹ The Lease Agreement was entered into by Heritage Aviation, Inc. d/b/a Heritage Aviation, which at such time was a wholly owned subsidiary of ElanAir, Inc. Heritage Aviation, Inc. d/b/a Heritage Aviation, Inc., subsequently merged into ElanAir, Inc., which changed its name to Heritage Aviation, Inc. d/b/a Heritage Aviation.

render any and all terms of the Lease Agreement regarding "Parcel H" and/or "Parcel I" null and void.

Upon the agreement of Lessor and Lessee, the **A. Ground Rental** subsection of section/paragraph 3. RENTAL AND OTHER AMOUNTS DUE LESSOR, of the Lease Agreement, is amended to read as follows:

A. **Ground Rental:** Ground rental on the entire Lease Premises (with the exception of Parcel G, for which no ground rental will be charged) shall be payable at the then current per square foot rate charged by Lessor, based upon the following square footage's as set forth in the 2011 Description, and 2011 Plan:

Parcel C:	59,640 sq. ft.
Parcel D:	72,770 sq. ft.
Parcel E:	22,445 sq. ft.
Parcel F:	10,440 sq. ft.
Parcel J:	490 sq. ft.
TOTAL:	165,785 sq. ft.

As of the date of this Amendment the current per square foot rate is \$ _____.

Said amount shall be paid in equal monthly installments in advance, of each calendar month of the term. Said amount shall be adjusted annually to reflect increases in the cost of living as reflected in the United States Department of Labor CPI-U index. In the event that the just referenced index is discontinued, or data from which said index can be directly computed or if the method for the determination of such an index can be directly computed or if the method for the determination of such an index is substantially different than that existing at the time that this Agreement is executed, the basis for the annual land rental rate adjustment shall be redefined by the parties in a manner reasonably consistent with the factors and methods used in calculating the last available CPI-U index. In no event shall the new rate be less than the immediately preceding rate.

Upon the agreement of Lessor and Lessee, section/paragraph 24. FINANCING BY LESSEE of the Lease Agreement is replaced and superseded in its entirety, by the following:

24. FINANCING BY LESSEE: For the purposes of financing, Lessee shall have the right, notwithstanding the provisions of Paragraph 21, from time to time to execute and deliver to one or more banks or other sources of financing ("Lessee's Lender") suitable mortgages, assignments or other security interest on all or any portion of the Improvements and its interest as Lessee under this Agreement ("the Leasehold Estate"), subject to the following terms and conditions:

a. Such security instruments shall constitute valid and enforceable liens in favor of Lessee's Lender, anything in this Agreement to the contrary notwithstanding.

b. Lessee shall give written notice to the Lessor of the identity of Lessee's Lender. No notice by the City to Lessee shall be effective unless and until a copy is also given to Lessee's Lender.

c. Lessee's Lender shall have an opportunity to cure any default by Lessee within the applicable time limits provided in this Agreement to Lessee plus an additional period of thirty (30) days, from the date Lessee's Lender receives notice. Lessor shall provide a copy of any notice of default by Lessee to Lessee's Lender.

d. In order to accomplish cancellation of this Agreement under Paragraphs 15 and 16 hereof, the party who would cancel shall deliver notice of such cancellation to Lessee's Lender, which or who shall thereupon have the right to become the owner of the Leasehold Estate on the same terms and priority as Lessee by paying back rent and curing such other defaults by Lessee as may then be existing.

e. Nothing contained in this Paragraph 24 shall be construed as requiring Lessee's Lender to cure a default by Lessee hereunder; rather it shall become liable under this Agreement only when and if it elects, upon default by Lessee, either to become owner of the Leasehold Estate or to assume the obligations of Lessee hereunder. In such event Lessee's Lender shall become liable hereunder for the period it is the owner of the Leasehold Estate and it shall have all rights of Lessee hereunder for said period the same as if it has been the original signatory hereof.

f. If Lessee's Lender becomes the owner of the Leasehold Estate, it shall, upon prior written consent of the Lessor as to the fact of transfer and the identity of the transferee, after consideration of the proposed transferee's experience in the aviation business, its capital structure and its general business reputation (which consent shall not be unreasonably withheld or delayed), have the right to transfer the Leasehold Estate to a third party subject to the assumption by its transferee

of all obligations of Lessee hereunder. Such a transfer by Lessee's Lender shall be in the form satisfactory to the Lessor. Upon such a transfer Lessee's Lender shall be relieved from all further responsibility and obligations of this Agreement.

g. Nothing herein contained shall be construed as limiting the right of Lessee to cure any of its defaults as elsewhere provided in this Agreement and, similarly, nothing herein contained shall be construed as granting Lessee's Lender, or its successors in interest, if any, greater rights in the Leased Premises and the Improvements than Lessee has under this Agreement.

Upon the agreement of Lessor and Lessee, section/paragraph 10. INSURANCE of the Lease Agreement is replaced and superseded in its entirety, by the following:

10. INSURANCE: Lessee shall carry comprehensive general liability insurance with responsible insurance underwriters, qualified to transact business in the State of Vermont, insuring Lessee, Lessor and Lessee's Lenders and/or mortgagees against all legal liability for injuries to persons (including wrongful death) and damages to property caused by Lessee's use and occupancy of the Leased Premises or otherwise caused by Lessee's activities or operations thereon with liability limits of not less than \$1,000,000.00 for any one person, and not less than \$5,000,000.00 for any accident involving injury (including wrongful death) to more than one person, and not less than \$5,000,000.00 for property damage resulting from any one accident. In addition, Lessee shall maintain Hangar Keepers insurance with liability limits of not less than \$1,000,000.00 for any one person, and not less than \$5,000,000.00 for any one incident. In addition, Lessee shall maintain fire, casualty, worker's compensation, business interruption (in sufficient amounts so as to enable Lessee to meet its rent obligations), flood and other appropriate types of coverage with insurers acceptable to Lessor, in such amounts as are acceptable to Lessor including hazard and extended coverage covering all leasehold improvements (including building, parking lot and utilities), chattels, furniture, fixtures, machinery and equipment located on the premises. Such policies shall name the City of Burlington and Lessee's Lenders and/or mortgagees as additional insureds. Such policies shall also contain a standard or "New York" loss payable clause and shall provide for at least thirty (30) days prior written notification to Lessor of any termination, cancellations or material modification of such policies. Lessee shall within ten

(10) days after the execution of this Lease Agreement, furnish Lessor with certificates of such insurance, which shall provide that Lessor is an insured under said policy. Thereafter, Lessee shall furnish Lessor with certificates of such insurance at no less than six month intervals during the term of this Lease Agreement. Lessor shall have the right to examine such insurance policies upon reasonable notice to Lessee. Lessor consents to its rights to any proceeds of the insurance called for by this section/paragraph 10. INSURANCE, being subordinate to those of Lessee's Lenders and/or mortgagees, so long as all rental and other amounts due Lessor are and remain current.

All other terms of the Lease Agreement remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused these presents to be executed by their respective officer or representative thereunto duly authorized.

CITY OF BURLINGTON

ATTEST: _____

By: _____
Robert McEwing, Interim Director of
Aviation, City of Burlington,
Burlington International Airport

HERITAGE AVIATION, INC.

ATTEST: _____

By: _____
Christopher A. Hill, President

STATE OF VERMONT)
CHITTENDEN COUNTY, SS)

At Burlington, Vermont this ____ day of _____ 2011 personally appeared Robert McEwing, the Interim Director of Aviation at the City of Burlington, Burlington International Airport and duly authorized agent of the City of Burlington, and he acknowledged this Lease Agreement by him sealed and subscribed to be his free act and deed and the free act and deed of the City of Burlington.

Notary Public
Commission Expires: 2-10-15

STATE OF VERMONT)
CHITTENDEN COUNTY, SS)

At South Burlington, Vermont this ____ day of _____ 2011 personally appeared Christopher A. Hill, President and duly authorized agent of Heritage Aviation, Inc., and he acknowledged this Lease Agreement by him/her sealed and subscribed to be his free act and deed and the free act and deed of Heritage Aviation, Inc.

Notary Public
Commission Expires: 2-10-15

200020-00181

**Lease Area Boundary Description
for the
Reconstructed 890 Building, Apron, Parking, Fuel/Glycol Storage Area and Wind Turbine
Heritage Aviation, Inc. d/b/a Heritage Aviation
Burlington International Airport**

Parcel C is a portion of the lands of the City of Burlington, known as the Burlington International Airport, and identified on the South Burlington Tax Map as parcel number 2000 00000. Parcel C being 59,640 square feet in area, and more particularly described as follows:

Beginning at a point with Vermont State Plane Coordinates North 716689.67, East 1471320.53, being a point of the so called Aircraft Parking Apron as shown on a plan entitled, "Exhibit #1, Lease Area Plan for Reconstructed 890 Building, Apron, Parking, Fuel/Glycol Storage Area and Wind Turbine, Heritage Aviation, Inc. d/b/a Heritage Aviation, Burlington International Airport" by Stantec Consulting – project number 195310535,

thence in a northwesterly direction along the Aircraft Parking Apron a distance of 286.82 ft at a bearing of N 00° 00' 00" W to a point,

thence in a northeasterly direction along the Aircraft Parking Apron a distance of 193.37 ft at a bearing of N 88° 37' 08" E to a point,

thence in a southeasterly direction along the Aircraft Parking Apron a distance of 276.48 ft at a bearing of S 01° 27' 04" E to a point,

thence in a southeasterly direction along the Aircraft Parking Apron a distance of 24.35 ft at a bearing of S 01° 27' 04" E to a point,

thence in a southwesterly direction along the Aircraft Parking Apron a distance of 221.61 ft at a bearing of S 88° 33' 33" W to a point,

thence in a northwesterly direction along the Aircraft Parking Apron a distance of 14.27 ft at a bearing of N 01° 31' 48" W to a point,

thence in a northeasterly direction along the Aircraft Parking Apron a distance of 20.99 ft at a bearing of N 88° 28' 12" E to the point of beginning of the Aircraft Parking Apron.

Parcel D is a portion of the lands of the City of Burlington, known as the Burlington International Airport, and identified on the South Burlington Tax Map as parcel number 2000 00000. Parcel D being 72,770 square feet in area, and more particularly described as follows:

Beginning at a point with Vermont State Plane Coordinates North 716601.57, East 1471553.39, being a point of the so called 890 Building, Access and Vehicle Parking Area as shown on a plan entitled, "Exhibit #1, Lease Area Plan for Reconstructed 890 Building, Apron,

Parking, Fuel/Glycol Storage Area and Wind Turbine, Heritage Aviation, Inc. d/b/a Heritage Aviation, Burlington International Airport” by Stantec Consulting – project number 195310535,

thence in a southeasterly direction along the edge of the 890 Building, Access and Vehicle Parking Area a distance of 219.51 ft at a bearing of S 01° 27' 04" E to a point,

thence in a southwesterly direction along the edge of the 890 Building, Access and Vehicle Parking Area a distance of 251.12 ft at a bearing of S 88° 36' 28" W to a point,

thence in a northwesterly direction along the edge of the 890 Building, Access and Vehicle Parking Area a distance of 298.92 ft at a bearing of N 01° 31' 48" W to a point,

thence in a southwesterly direction along the edge of the 890 Building, Access and Vehicle Parking Area a distance of 221.61 ft at a bearing of S 88° 33' 33" W to a point,

thence in a southeasterly direction along the edge of the 890 Building, Access and Vehicle Parking Area a distance of 79.62 ft at a bearing of S 01° 27' 04" E to a point,

thence in a northeasterly direction along the edge of the 890 Building, Access and Vehicle Parking Area a distance of 29.93 ft at a bearing of N 88° 32' 56" E to the point of beginning of the 890 Building, Access and Vehicle Parking Area.

Parcel E is a portion of the lands of the City of Burlington, known as the Burlington International Airport, and identified on the South Burlington Tax Map as parcel number 2000 00000. Parcel E being 22,445 square feet in area, and more particularly described as follows:

Beginning at a point with Vermont State Plane Coordinates North 716350.34, East 1471315.91, being a point corner of the so called Vehicle Parking Area as shown on a plan entitled, “Exhibit #1, Lease Area Plan for Reconstructed 890 Building, Apron, Parking, Fuel/Glycol Storage Area and Wind Turbine, Heritage Aviation, Inc. d/b/a Heritage Aviation, Burlington International Airport” by Stantec Consulting – project number 195310535,

thence in a northeasterly direction along the edge of the Vehicle Parking Area a distance of 244.05 ft at a bearing of N 88° 28' 27" E to a point,

thence in a southeasterly direction along the edge of the Vehicle Parking Area a distance of 91.89 ft at a bearing of S 01° 31' 49" E to a point,

thence in a southwesterly direction along the edge of the Vehicle Parking Area a distance of 244.05 ft at a bearing of S 88° 26' 35" W to a point,

thence in a northwesterly direction along the edge of the Vehicle Parking Area a distance of 92.02 ft at a bearing of N 01° 31' 38" W to the point of beginning of the Vehicle Parking Area.

Parcel F is a portion of the lands of the City of Burlington, known as the Burlington International Airport, and identified on the South Burlington Tax Map as parcel number 2000 00000. Parcel F being 10,440 square feet in area, and more particularly described as follows:

Beginning at a point with Vermont State Plane Coordinates North 716255.32, East 1471641.51, being a point of the so called Fuel and Glycol Site as shown on a plan entitled, "Exhibit #1, Lease Area Plan for Reconstructed 890 Building, Apron, Parking, Fuel/Glycol Storage Area and Wind Turbine, Heritage Aviation, Inc. d/b/a Heritage Aviation, Burlington International Airport" by Stantec Consulting – project number 195310535,

thence in a southeasterly direction along the edge of the Fuel and Glycol Site a distance of 71.50 ft at a bearing of S 01° 31' 48" E to a point,

thence in a southwesterly direction along the edge of the Fuel and Glycol Site a distance of 146.00 ft at a bearing of S 88° 28' 12" W to a point,

thence in a northwesterly direction along the edge of the Fuel and Glycol Site a distance of 71.50 ft at a bearing of N 01° 31' 48" W to a point,

thence in a northeasterly direction along the edge of the Fuel and Glycol Site a distance of 146.00 ft at a bearing of N 88° 28' 12" E to the point of beginning of the Fuel and Glycol Site.

Parcel G is a portion of the lands of the City of Burlington, known as the Burlington International Airport, and identified on the South Burlington Tax Map as parcel number 2000 00000. Parcel G being 6,155 square feet in area, and more particularly described as follows:

Beginning at a point with Vermont State Plane Coordinates North 716725.74, East 1471556.87, being at a point of the so called 890 Building Annex and Airside Access as shown on a plan entitled, "Exhibit #1, Lease Area Plan for Reconstructed 890 Building, Apron, Parking, Fuel/Glycol Storage Area and Wind Turbine, Heritage Aviation, Inc. d/b/a Heritage Aviation, Burlington International Airport" by Stantec Consulting – project number 195310535,

thence in a southeasterly direction along the edge of the 890 Building Annex and Airside Access a distance of 137.29 ft at a bearing of S 17° 57' 35" E to a point,

thence in a southwesterly direction along the edge of the 890 Building Annex and Airside Access a distance of 10.18 ft at a bearing of S 88° 32' 56" W to a point,

thence in a northwesterly direction along the edge of the 890 Building Annex and Airside Access a distance of 22.88 ft at a bearing of N 17° 57' 04" W to a point,

thence in a southwesterly direction along the edge of the 890 Building Annex and Airside Access a distance of 30.17 ft at a bearing of S 72° 01' 30" W to a point,

thence in a southeasterly direction along the edge of the 890 Building Annex and Airside Access a distance of 5.75 ft at a bearing of S 01° 27' 04" E to a point,

thence in a southwesterly direction along the edge of the 890 Building Annex and Airside Access a distance of 29.93 ft at a bearing of S 88° 32' 56" W to a point,

thence in a northwesterly direction along the edge of the 890 Building Annex and Airside Access a distance of 79.62 ft at a bearing of N 01° 27' 04" W to a point,

thence in a northwesterly direction along the edge of the 890 Building Annex and Airside Access a distance of 24.35 ft at a bearing of N 01° 27' 04" W to the point,

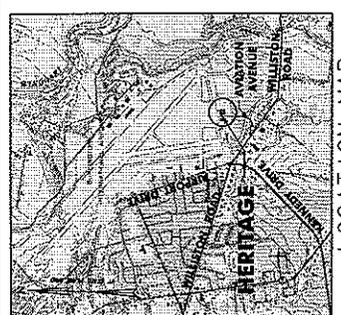
thence in a northeasterly direction along the edge of the 890 Building Annex and Airside Access a distance of 25.55 ft at a bearing of N 72° 02' 56" E to the point,

thence in a northwesterly direction along the edge of the 890 Building Annex and Airside Access a distance of 8.84 ft at a bearing of N 18° 01' 59" W to the point,

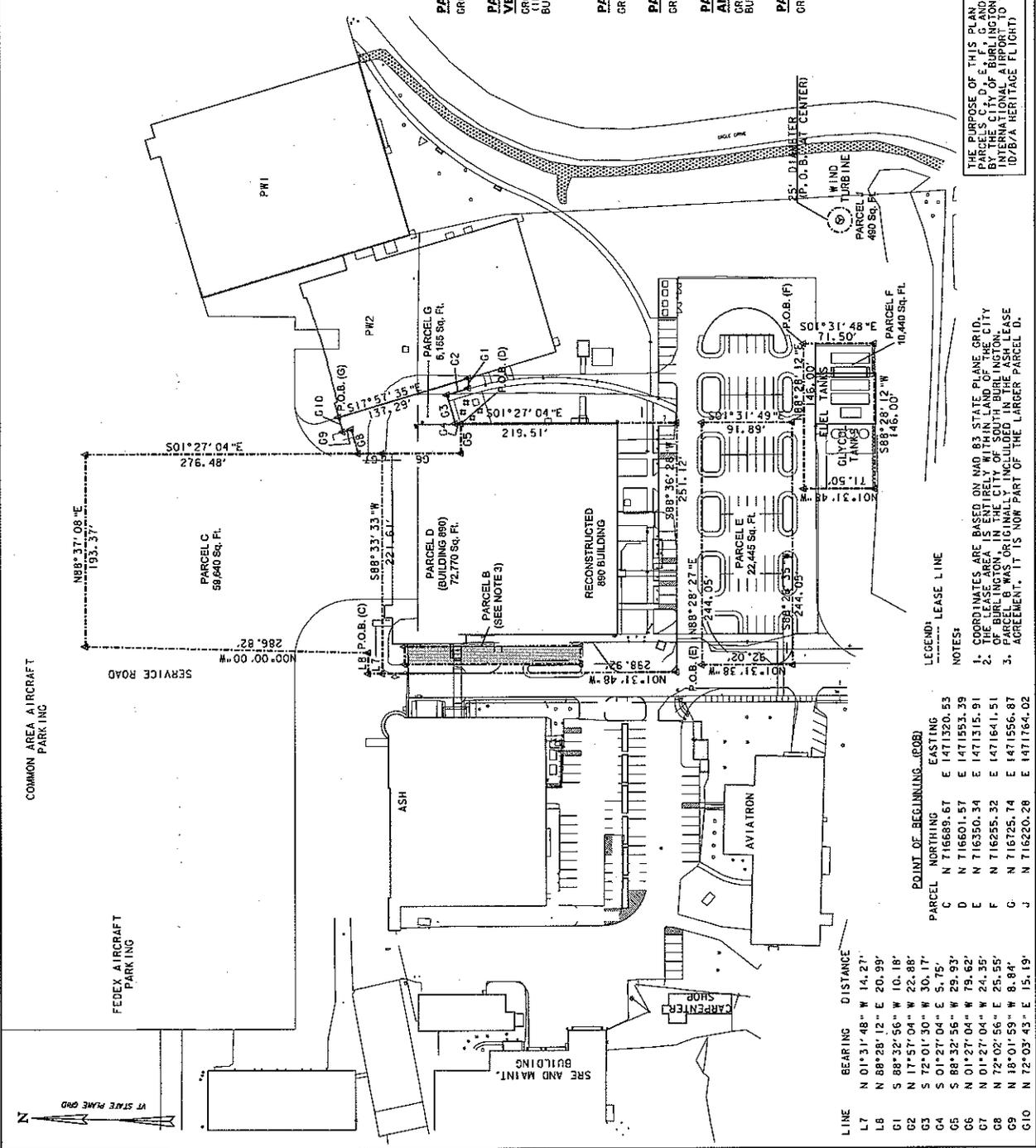
thence in a northeasterly direction along the edge of the 890 Building Annex and Airside Access a distance of 15.19 ft at a bearing of N 72° 03' 43" E to the point of beginning of the 890 Building Annex and Airside Access.

Parcel J is a portion of the lands of the City of Burlington, known as the Burlington International Airport, and identified on the South Burlington Tax Map as parcel number 2000 00000. Parcel J being 490 square feet in area, and more particularly described as follows:

Beginning at a point with Vermont State Plane Coordinates North 716220.28, East 1471764.02, said point being at the center of the 25 ft diameter circle of the so called Wind Turbine Site as shown on a plan entitled, "Exhibit #1, Lease Area Plan for Reconstructed 890 Building, Apron, Parking, Fuel/Glycol Storage Area and Wind Turbine, Heritage Aviation, Inc. d/b/a Heritage Aviation, Burlington International Airport" by Stantec Consulting – project number 195310535.



- PARCEL C - AIRCRAFT PARKING APRON**
 GROUND LEASE AREA = 59,640 SF
- PARCEL D - 890 BUILDING, ACCESS, AND VEHICLE PARKING**
 GROUND LEASE AREA = 72,770 SF (INCLUDES PARCEL B AREA)
 BUILDING LEASE AREA = 17,470 SF (SECOND FLOOR)
 TOTAL BLDG. LEASE AREA = 65,300 SF
- PARCEL E - VEHICLE PARKING AREA**
 GROUND LEASE AREA = 22,445 SF
- PARCEL F - FUEL AND GLYCOL SITE**
 GROUND LEASE AREA = 10,440 SF
- PARCEL G - 890 BUILDING ANNEX AND BUILDING ACCESS**
 GROUND LEASE AREA = 6,155 SF
 BUILDING LEASE AREA = 6,155 SF (FOOTPRINT)
- PARCEL J - WIND TURBINE SITE**
 GROUND LEASE AREA = 490 SF



THE PURPOSE OF THIS PLAN IS TO IDENTIFY PARCELS D, E, F, G, AND J AND TO BASED THEREON, THE CITY OF BURLINGTON, VERMONT INTERNATIONAL AIRPORT TO ELAN AIR, INC. (D/B/A HERITAGE FLIGHT)

LEGEND: LEASE LINE

NOTES:

- COORDINATES ARE BASED ON NAD 83 STATE PLANE GRID.
- THE LEASE AREA IS ENTIRELY WITHIN LAND OF THE CITY OF BURLINGTON IN THE CITY OF SOUTH BURLINGTON.
- AGREEMENT: IT IS NOW PART OF THE LARGER PARCEL D.

LINE	BEARING	DISTANCE	POINT OF BEGINNING (POB)	NORTHING	EASTING
L7	N 01°31'48" W	14.27'	C	N 716689.67	E 1471320.53
L8	N 88°28'12" E	20.99'	D	N 716601.57	E 1471533.39
G1	S 88°32'56" W	10.18'	E	N 716350.34	E 1471315.91
G2	N 17°57'04" W	22.88'	F	N 716235.32	E 1471641.51
G3	S 72°01'30" W	30.17'	G	N 716125.74	E 1471556.87
G4	S 01°27'04" E	5.76'	J	N 716725.74	E 1471556.87
G5	S 88°32'56" W	29.93'		N 716220.28	E 1471764.02
G6	N 01°27'04" W	19.62'			
G7	N 01°27'04" W	24.35'			
G8	N 72°02'56" E	25.55'			
G9	N 88°01'59" W	8.84'			
G10	N 72°03'43" E	15.19'			